

Supreme Court of the United States

October Term, 1943.

No. 154

Office, Supreme Court, U. S.

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CHARLES ELMORE CROPLEY
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ANDERSON NATIONAL BANK,

Suing on Behalf of Itself and All Others Similarly Situated,
Appellant,

vs.

H. CLYDE REEVES, Individually and as Commissioner of
Revenue of the State of Kentucky and a Member of the
Kentucky Tax Commission,

C. M. C. PORTER, and

R. L. MCFARLAND, Individually and as Members of the
Kentucky Tax Commission,

HUBERT MEREDITH, Individually and as Attorney General
of the State of Kentucky,

Respondents.

Appeal from the Court of Appeals of the State of Kentucky.

BRIEF AND ARGUMENT

FILED BY THE STATE OF MINNESOTA AS *AMICUS*
CURIAE, THE STATE OF WISCONSIN JOINING.

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Amicus Curiae.

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BRIEF AND ARGUMENT

FILED BY THE STATE OF MINNESOTA AS AMICUS
CURIAE, THE STATE OF WISCONSIN JOINING.

PRELIMINARY STATEMENT.

This brief is submitted on behalf of the State of Minnesota in support of the position of respondents. The State of Wisconsin, by its Attorney General, joins in the brief.

The State of Minnesota has a special interest in the questions involved because of questions which have been raised by national banks in connection with the enforcement of Laws of Minnesota for 1943, Chapter 620, a copy of which is annexed to this brief as Appendix "A".

Wisconsin Statutes 1941, Section 220.25, a copy of which is annexed hereto as Appendix "B", has been sustained as to state banks by the Supreme Court of Wisconsin in *State v. Marshall & Illsley Bank*, 234 Wis. 375, 291 N. W. 361, but the question of its validity as applied to national banks has not been determined.

While these statutes differ in certain particulars from the 1940 Kentucky Act as amended¹, the fundamental propositions involved in all are the same.

ARGUMENT.

Point I.

**First National Bank of San Jose v. California Is Inconsistent with Prior and Subsequent Decisions of
This Court and Should Be Overruled.**

We respectfully submit that *First National Bank of San Jose v. State of California*, 262 U. S. 366 (hereinafter

¹Acts 1940, Ch. 79, p. 333; Ky. St. 1605a-1622-1, both inclusive, May, 1940, Supp. to Carroll's Kentucky Statutes, 1936, as amended by Acts 1942, Ch. 156, p. 637.

referred to as the "*San Jose case*"), should be overruled as inconsistent with the prior and subsequent decisions of this Court, in so far as it holds that a state statute providing for the transfer of unclaimed bank deposits to the state, and under certain conditions for their escheat, otherwise valid and constitutional, is invalid as applied to national banks.

The *San Jose case* involved the application of Section 1273, California Code of Civil Procedure, to national banks. This section reads:

"All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state."

The statute further directs the attorney general to institute actions against banks and depositors to recover all such amounts and provides that, if it be determined that the moneys deposited in any defendant bank or banks are unclaimed, then the court must render judgment in favor of the state, declaring that said moneys have escheated to the state and commanding the bank or banks forthwith to deposit the moneys with the state treasurer, to be handled in the same manner as is provided by law in the case of other escheated property.

Judgment having been given for the state against the plaintiff in error, a national bank, for the amounts credited

upon its books to a depositor for more than 20 years, this Court was asked to hold that, so construed and applied, Section 1273 conflicted with the laws of the United States touching national banks and was, therefore, invalid. This Court so held.

In support of the opinion there were cited, among other cases, *McCulloch v. Maryland*, 4 Wheat. 316, and *Osborn v. United States Bank*, 9 Wheat. 738.

The decision in *McCulloch v. Maryland*, 17 U. S. (4 Wheat.) 315, sustaining the act of the 10th April, 1816, incorporating the Bank of the United States, was bottomed on the proposition that the Bank of the United States was an instrument of government for fiscal purposes, and denied the right of taxation by the state on the ground that such a right might be used in such cases so as to destroy the instrumentalities by which the government proposed to effect its lawful purposes in the states.

In *Osborn v. Bank*, 22 U. S. (9 Wheat.) 737, it was argued for appellants that the law was unconstitutional because the corporation had been originated for the management of an individual concern, to be founded on contract between individuals, having private trade and private profit for its great end and principal object. Chief Justice Marshall conceded "That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government," following this by the statement:

"The whole opinion of the court, in the case of *McCulloch v. State of Maryland*, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' "

Then, defending the right of Congress to protect the bank in its private business, the Chief Justice argued that it could not effect the object of carrying on the fiscal operations of the government "unless it be endowed with that faculty of lending and dealing in money, which is conferred by its charter." From this premise he concluded that to tax the faculties, trade, and occupation of the bank would be to tax the bank itself and, viewing taxation as a possible method of destruction, concluded that, "To destroy or preserve the one, is to destroy or preserve the other."

National Bank v. Commonwealth, 76 U. S. (9 Wall.) 353, entirely overlooked in the *San Jose case* but cited with approval and followed by this Court in *Colorado v. Bedford*, 310 U. S. 41, 51, clarified any doubts that may have existed as to the powers of a state with reference to the operations of national banks. Because of the succinct statement by Mr. Justice Miller, we avoid a lengthy argument by a brief quotation. It will be kept in mind that the law of Kentucky there involved not only imposed a tax upon the shares of a national bank but compelled the payment of the tax levied on the shares by the bank. The second question, as stated in the opinion, was:

"If it is found to be a tax on the shares, can the bank be compelled to pay the tax thus levied on the shares by the State?"

Mr. Justice Miller said:

"But it is argued that the banks, being instrumentalities of the Federal government, by which some of its important operations are conducted, cannot be subjected to such State legislation. It is certainly true

that the Bank of the United States and its capital were held to be exempt from State taxation on the ground here stated, and this principle, laid down in the case of *McCulloch v. The State of Maryland*, has been repeatedly affirmed by the court. But the doctrine has its foundation in the proposition, that the right of taxation may be so used in such cases as to destroy the instrumentalities by which the government proposes to effect its lawful purposes in the States, and it certainly cannot be maintained that banks or other corporations or instrumentalities of the government are to be wholly withdrawn from the operation of State legislation. * * * The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal government are only exempted from State legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the States. The salary of a Federal officer may not be taxed; he may be exempted from any personal service which interferes with the discharge of his official duties, because those exemptions are essential to enable him to perform those duties. But he is subject to all the laws of the State which affect his family or social relations, or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and con-

strued by State laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law. *It is only when the State law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.*² We do not see the remotest probability of this, in their being required to pay the tax which their stockholders owe to the State for the shares of their capital stock, when the law of the Federal government authorizes the tax."

See also:

Clement National Bank v. Vermont, 231 U. S. 120;

McClellan v. Chipman, 164 U. S. 347;

Waite v. Dowley, 94 U. S. 527.

The cases following the *San Jose* case hold to the same rule:

Des Moines Bank v. Fairweather, 263 U. S. 103, 111;

First National Bank v. Missouri, 263 U. S. 640, 656.

Colorado National Bank of Denver v. Bedford, 310 U. S. 41 (1940), involved the validity of the Public Revenue Service Tax Act of Colorado.³

One section of this act imposed upon certain services rendered by banks and other financial institutions a percentage tax based upon the value of the services rendered or performed. The person rendering the services was made liable and responsible for the entire amount, being required, as far as practicable, to add the tax imposed to the value of services or charges. Among the services included was that of furnishing of safety vaults by banks. One of

²All emphasis in this brief supplied unless otherwise noted.

³Session Laws of Colorado, 1937, Ch. 240, p. 1144.

the claims of the bank in that case was that the tax was invalid because laid upon the bank as an instrumentality of government. This Court held, following *National Bank v. Commonwealth*, 76 U. S. (9 Wall.) 353, that, since the user was the actual taxpayer and the tax being a permissible tax on the customers of the bank, the statutory provisions requiring collection and remission of the taxes did not impose an unconstitutional burden on a federal instrumentality.

The opinion in the *San Jose case* appears to proceed upon the theory that under acts such as those under consideration the state violates rights of both bank and depositor. This was neither the prior nor the subsequent holding of this Court.

In *Provident Institution for Savings v. Malone*, 221 U. S. 660, this Court, passing on the Massachusetts law as to savings banks, still in effect⁴, which requires a savings bank to pay over to the state as a depository (with a right on the part of the depositors to reclaim them) deposits which have remained inactive or unclaimed for 30 years, or where the claimant is unknown or the depositor cannot be found, held that the contract of deposit does not give the bank a tontine right to retain the money in the event that it is not called for by the depositor; it gives the bank merely the right to use the depositor's money until called for by him or some other person duly authorized, and, if the deposit is turned over to the state in obedience to a valid law, the obligation of the state to the depositor is discharged.

We are then led to *Security Savings Bank v. State of*

⁴Mass. Gen'l Laws, 1932, Ch. 168, Sec. 42.

California, 263 U. S. 282, decided within six months after the *San Jose* case and involving the same statute there considered, but considering it as applied to state banks. In the *Security Savings Bank* case this Court held that savings deposits are intangible property, subject to the dominion of the state; that no right of the bank under the contract clause of the Constitution or the due process clause of the Fourteenth Amendment was violated by the act; that there was proper jurisdiction over the deposit and proper notice. The Court said:

"It is no concern of the bank's whether the State receives the money merely as depositary or takes it as an escheat."

Certainly, a national bank is no more immune to state legislation than are the federal courts and the United States Treasury. In *U. S. v. Klein, Escheator of Pennsylvania*, 303 U. S. 276, this Court had under consideration a law of Pennsylvania⁵, conferring upon the Court of Common Pleas jurisdiction to decree an escheat of moneys deposited in the custody or under the control of any court of the United States within the commonwealth. This statute provided that such funds should be escheatable if the owner, beneficial owner, or person entitled thereto had been, or his whereabouts had been, unknown for seven years. A suit having been brought to have declared an escheat of certain moneys paid into the registry of the federal court and thereafter deposited in the Treasury of the United States, and a decree entered declaring that the fund had escheated to the commonwealth and directing the escheator to apply to the federal district court for an order that the

⁵Apt of June 28, 1935, P. L. 475.

moneys be paid to him as escheator, which was affirmed by the State Supreme Court⁶, the Government appealed, claiming that the decree was an unconstitutional interference with a court of the United States, an invasion of its sovereignty, and an attempt, void under the Fourteenth Amendment, to exercise jurisdiction over the absent bondholders and the moneys, neither of which was shown to be within the state.

This Court affirmed, saying:

"The present decree for escheat of the fund is not founded on possession and does not disturb or purport to affect the Treasury's possession of the fund or the district court's authority over it. * * * At most the decree of the state court purports to be an adjudication upon the title of the unknown claimants in the fund by a proceeding in the nature of an inquest of office as in the case of escheated lands, * * * and to confirm the authority of appellee to make claim to the moneys."

The *San Jose* case starts with this premise:

"These (national) banks are instrumentalities of the Federal Government. Their contracts and dealings are subject to the operation of general and undiscriminating state laws which do not conflict with the letter or the general object and purposes of congressional legislation. But any attempt by a State to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created." (pp. 368-369.)

There can be no claim that the California Act there involved, the Kentucky Act here involved, the Minnesota Act, a copy of which is attached to this brief, or any of the other so-called escheat acts referred to in the various cases cited in all the briefs, which include within their terms national banks, are not general and indiscriminating, because in every instance they include as well state banks. They do not conflict with the laws of the United States. They cannot be said to frustrate the purposes of the national legislation stated by this Court in all the cases from *McCulloch v. Maryland* down.

"Even in the case of agencies created or appointed to do the government's work we have been slow to infer an immunity which Congress has not granted and which Congressional policy does not require." *Penn Dairies v. Milk Control Comm'n*, 318 U. S. 261, 271.

The whole basis of the decision is that such laws impair the efficiency of the bank to discharge the duties for which it was created.

There is nothing sacrosanct about a national bank when engaged in the business of accepting deposits. Depositors in a national bank have no greater rights than depositors in a state bank. Every day deposits in national banks are garnished and attached. They are seized by the taxing authorities, both state and federal. They are delivered over to executors and administrators under orders of probate courts. They are delivered to heirs of depositors under decrees of distribution. Certainly, if a tax were owing to the State of California or to the State of Kentucky or to the State of Minnesota by a depositor in a national bank in any one of those states, no claim could be made by the

bank that the taxing authorities could not levy on the deposit. As stated in *National Bank v. Commonwealth*, supra:

"If the State of Kentucky had a claim against a stockholder of the bank who was a non-resident of the State, it could undoubtedly collect the claim by legal proceeding, in which the bank could be attached or garnisheed, and made to pay the debt out of the means of its shareholder under its control. This is, in effect, what the law of Kentucky does in regard to the tax of the State on the bank shares. It is no greater interference with the functions of the bank than any other legal proceeding to which its business operations may subject it, and it in no manner hinders it from performing all the duties of financial agent of the government."

Every time a deposit is transferred from the depositor to another person by operation of law there is a dissolution, or partial dissolution, of the contract of deposit. As to the statement that, when a state demands a deposit from a national bank under a claim of ownership by virtue of a statute relating to abandonment, there is a qualification in an unusual way of an agreement between that bank and its customer, long understood to have arisen when the bank received the deposit under its plainly granted powers, we ask whether there is a qualification in an unusual way of such an agreement when the account of a depositor in a national bank is attached or garnished by a creditor or is seized by a taxing authority or is demanded by an executor, an administrator, or an heir, acting pursuant to an order or decree of probate court. What different situation arises when a state, by virtue of a statute which has been held by

this Court in *Security Savings Bank v. California*, 263 U. S. 282, to violate no right of the bank under the contract clause of the Constitution or the due process clause of the Fourteenth Amendment, claims the right to possession or ownership of a deposit and makes a demand upon the national bank for that deposit? Conceding that the deposit has created a relationship between the bank and the depositor where the bank is the debtor and the depositor is the creditor, what right has the debtor to say that it will pay its debt only to the original creditor, regardless of any transfer of the rights of that creditor which may have been made by operation of law?

Is it necessary, in order that a national bank may perform its governmental functions as a fiscal agent for the government, that it keep for itself all abandoned deposits?

If the estate of an individual is probated, actual death having been established but the estate of the individual having been decreed to the state under escheat laws for want of heirs, and the probate court makes a decree of distribution assigning the estate of the individual to the state and in that estate is included a deposit in a national bank, may the national bank say that there is an unusual qualification of the agreement of deposit made with the deceased because of the fact that the state has secured title to the deposit by reason of an escheat law and that, therefore, it will not pay over the funds represented by the deposit?

As to the statement in the opinion that, "If California may thus interfere other States may do likewise; and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or ten; or fifteen," would it be seriously contended by anyone that, if a state

were to enact legislation providing for the transfer of deposits to it because they had not been dealt with for three years, such a statute would be sustained under the due process clause of the Constitution by any state court, to say nothing of this Court?

As to the argument that "The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation," there are three answers. (a) The argument would apply as well to state banks as to national banks, and, therefore, no escheats law could be upheld. (b) Any individual making a deposit in a bank does so with the knowledge that that deposit will be subject to any and all lawful proceedings. (c) Any depositor who fails to deal with his deposit for a sufficient length of time to create a presumption that he has abandoned it has no more cause for complaint if possession or title be taken by the state in proceedings affording him due process of law than has a creditor who fails to enforce his rights within a period of limitations or within such a period that he may claim freedom from the defense of laches.

The *San Jose* case cannot be reconciled with *National Bank v. Commonwealth*, *Security Bank v. California*, *Colorado Bank v. Bedford*, *Provident Institution for Savings v. Malone*, *United States v. Klein*, or *First National Bank v. Missouri*. It is an orphan, without posterity. It has received no approval by this Court except by mention in a footnote to *Security Bank v. California* and by being followed without comment in the per curiam decision in *National City Bank of New York v. Philippine Islands*,

302 U. S. 651. Until it is overruled, however, it will continue to influence the courts as is evidenced by the decisions in *American National Bank of Nashville v. Clarke*, 175 Tenn. 480, 135 S. W. (2d) 935, and *Starr v. O'Connor* (C. C. A. 6), 118 Fed. (2d) 548.

Point II.

Requiring Reports by National Banks of Dormant Accounts Constitutes No Interference with Their Functions as Governmental Agencies.

This point should require no additional argument.

Waite v. Dowley, 94 U. S. 527;

Colorado National Bank of Denver v. Bedford, 310 U. S. 41.

Point III.

Laws Providing for Transfer of Custody and Escheat of Abandoned Bank Deposits Are Not Unusual.*

The proposition that there is no qualification in an unusual way of an agreement between a bank and its depositor when, by virtue of statutory authority, the state takes possession of or acquires title to the depositor's abandoned bank account finds ample support in the fact that many states have over a long period of years enacted statutes providing for the transfer of custody, and in a number of cases for the escheat, of bank deposits abandoned for varying terms of years. The statutes cited *infra* deal with deposits in active banks and do not include the many statutes which provide for transfer to the state of

unclaimed deposits in the hands of liquidators.

Alaska: Comp. Laws 1933, §2903 as Am. by Laws 1939, Ch. 27.*

Arizona: Arizona Code Ann. 1939, §§ 51-517.*

California: Stats. 1915, pp. 107, 1106, and Code Civ. Procedure, §1273.*

Connecticut: Pub. Acts 1931, Ch. 200; Supp. Conn. Gen'l Stats. 1931-33-35, §1479 *et seq.* as Am. by Pub. Acts 1941, Ch. 101, §1.*

Kentucky: See citations *supra*.

Louisiana: Louisiana Gen'l Stats. Dart, §§534, 692.

Massachusetts: Gen'l Laws 1932, Ch. 168, §42.

Michigan: Comp. Laws 1929, §§13459-13477 as Am. 1939 Pub. Acts No. 299.*

Minnesota: See Appendix "A".

New Hampshire: Revised Laws 1942, Ch. 309, §§25-31.

New York: McKinney's Consol. Laws of New York—
Banking Law, §§ 2(23); 256-257.

Oregon: Code 1930, Vol. 1, §§ 11-1212 to 11-1216.*

Pennsylvania: Purdon's Pa. Stat. Ann., §282 as Am. by Act of 1935, May 16, P. L. 195, §1.*

Vermont: Pub. Laws 1933, §§6728-6738.

Wisconsin: See Appendix "B".

(* Includes all banks.)

CONCLUSION.

It is respectfully submitted that the decision of the Court of Appeals of Kentucky should be affirmed.

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APPENDIX "A"**Minnesota Bank Deposit Escheats Statute.
Chapter 620****A BILL**

FOR AN ACT relating to funds or other property left on deposit, or otherwise, with banking and financial institutions, and abandoned; and to pay refunds claimed pursuant thereto, and repealing Laws 1937, Chapter 358, being Mason's supplement 1940, Sections 7658-21 to 7658-27.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Subdivision 1. The following words, terms, and phrases shall, for the purposes of this Act, be given the meanings subjoined to them.

Subdivision 2. "Banking institution" means any state bank, national bank, savings bank, or trust company, within this state.

Subdivision 3. "Financial institution" means any savings, building, and loan association organized under the laws of this state, federal savings and loan association, credit union, industrial loan and thrift company, or other financial institution within this state.

Subdivision 4. "Person" means a partnership, association, or corporation, as well as a natural person.

Subdivision 5. "The state" means the State of Minnesota.

Subdivision 6. "Deposit" and "funds or other property", when such funds or other property are referred to as having been left on deposit or held on deposit, each

means the unpaid balance of money or its equivalent received by a banking institution or financial institution in the usual course of business and for which it has given or is obligated to give credit to a commercial, checking, savings, time or thrift account, or which is evidenced by its certificate of deposit, passbook, share certificate, certificate of indebtedness, or other like certificate.

Sec. 2. When any person abandons any funds or other property which have been left on deposit, or otherwise, with any banking institutions or financial institution, the same shall, with the increase and proceeds thereof, escheat to and become the property of the state.

Sec. 3. Any person who has left on deposit, or otherwise, with any banking institution or financial institution, any funds or other property, and has not dealt therewith for a period of 20 years by adding thereto, withdrawing therefrom, or asserting any claim thereto, is presumed to have abandoned the same.

Sec. 4. Subdivision 1. (1) It shall be the duty of the cashier or managing officer of every banking institution and financial institution, which on June 30, 1943, holds on deposit, or otherwise, any funds or other property which have been left with it on deposit, or otherwise, and have not been dealt with for a period of 20 years by additions thereto, withdrawals therefrom, or the assertion of any claim thereto, to file with the secretary of state, within thirty days thereafter, a statement, in duplicate, reporting the same, stating the names of the persons shown by the records of said banking institution or financial institution to have been the owners or depositors of such funds or other property; the last known place of residence or busi-

ness of each, and in each instance, the kind of funds or other property, and how held, the amount of the deposit, including interest if any, and the value and nature of the property otherwise held, including interest or other increase or proceeds thereof, if any. This statement shall be subscribed by the officer making it, and shall be verified by his affidavit that it is a complete and correct statement of the funds and other property required by this subdivision to be reported, and that the statements therein are true to the best of his knowledge, information and belief.

(2) Like verified statements, in duplicate, shall be filed with the secretary of state, within 30 days after the first day of January in each year thereafter, by the cashiers or managing officers of all banking institutions and financial institutions which, on said first day of January, hold on deposit, or otherwise, any funds or other property, which by the terms of Section 3 of this Act are presumed to have been abandoned.

(3) The duplicate copies of these verified statements shall be delivered by the secretary of state to the attorney general immediately after filing.

Subdivision 2. The secretary of state shall have the statements referred to in Subdivision 1 of this section bound at the expiration of each filing period, and shall make and keep an alphabetical index of persons reported as depositors or owners, with appropriate references to the bound statements, and these bound statements and index shall be open to public inspection.

Subdivision 3. A copy of each statement required by Subdivision 1, together with a notice, directed to whom it may concern, stating that the deposits or other property

referred to in the statement have not been dealt with by additions thereto, withdrawals therefrom, or claim thereto, for a period of 20 years, and requesting all persons having knowledge or information relative to the whereabouts of the persons named in the statement, or other possible claimants to the funds or other property, to give this information to the subscribing officer, shall be displayed in a prominent place in the banking institution or financial institution for which the statement is filed, accessible to the public, for a period of 30 days from the date of filing.

Sec. 5. Subdivision 1. Whenever the attorney general has reason to believe, from an examination of the statements required by Subdivision 1 of Section 4 hereof to be filed, or from other information or investigation, that any funds or other property, in this Act referred to, have escheated to and become the property of the state by reason of the abandonment thereof, he shall commence an action or actions in the name of the state in this district court of Ramsey County to declare the escheat of and enforce the rights of the state in and to said funds or other property, or any part thereof. Such action shall be commenced by the filing of a verified complaint in the office of the clerk. All or any number of persons who are claimed to have abandoned such funds or other property and any other known claimants to the same may be joined as defendants in one action. The place of trial of any such action shall not be changed without the consent of the attorney general. Every such action shall be triable by the court without a jury.

Subdivision 2. (1) In any such action the state, at the time of the filing of the complaint in the office of the clerk, or at any time thereafter, may have the funds or other

property held by banking institutions and financial institutions on deposit, or otherwise, and claimed by the state to have been abandoned by the defendants, or any part of such funds or other property, attached, in the manner hereinafter prescribed, as security for the satisfaction of such judgment as it shall recover.

(2) To procure such attachment, the attorney general shall file a petition verified by himself or one of his assistants on information and belief, for a writ or writs of attachment, which petition shall set forth that the action is brought under the provisions of this Act for the purpose of declaring the escheat of and enforcing the rights of the state in and to certain funds and other property, claimed to have been abandoned, referring to the complaint on file for a description of the funds and other property involved; that the state, as plaintiff, desires certain of those funds and other property attached as security for the satisfaction of such judgment as it may recover, and that to that end he prays that one or more writs of attachment issue, directed to the sheriffs of such counties as shall be designated in the petition, requiring the attachment of the funds or other property to be in the petition described. The petition shall then set forth, as to each writ desired, the name of the county to the sheriff of which said writ shall run, and a statement of the funds and other property sought to be attached, stating as to each item of such funds and other property the name of the defendant by whom it is claimed it has been abandoned, and the names of any other known claimants thereto; the last known residence or business address of such person or person, if known, and if not known, stating that fact; the amount or value thereof, in-

cluding interest or other increase or proceeds thereof, whether funds or other property, and how held, describing the property if other than funds, and the name and business address of the banking institution or financial institution holding such funds or other property, including the name of the county in which it is doing business. A writ or writs of attachment shall then be allowed by a judge of the court in which the action is brought. No bond shall be required as a condition of allowing any such writ.

(3) Upon the filing of the petition and the order of allowance, the clerk shall issue the writ or writs prayed for. If more than one writ is issued, such writs may be directed to the sheriffs of different counties as specified in the petition. Each writ shall require the sheriff to attach the funds or other property held by banking institutions and financial institutions in his county on deposit, or otherwise, attachment of which was prayed for in the petition, and shall describe the funds and other property to be attached, stating as to each item thereof the same matters required to be stated in the petition.

(4) The sheriff, upon receiving the writ shall execute the same without delay. He shall attach all funds and other property described in the writ as being held by any banking institution or financial institution by leaving with such banking institution or financial institution a certified copy of the writ and a notice specifying the funds and other property attached. When he has executed the writ he shall annex to it an inventory of the funds and other property attached, and return the writ with his doings to the court.

Subdivision 3. Service of the summons may be made

upon the defendants in any action by publication of a copy thereof once each week for four consecutive weeks in a newspaper of general circulation published in each of the counties in which funds and other property have been attached. The first publication shall be made within 30 days after the issuance of the first writ of attachment in any action. If publications are made in more than one county such publications shall all be commenced within the same week. With the summons a notice shall be published, giving the title of the action and referring to the claim therein, and directed to all persons other than those named as defendants therein claiming any interest in any funds or other property described in the complaint, and requiring them to appear within 60 days after the first publication of the summons and show cause, if any they have, why it should not be adjudged that the owners of such funds and other property have abandoned the same, and why such funds and other property have not escheated to and become the property of the state, and notifying them that if they do not so appear and show cause the state will apply to the court for the relief demanded in the complaint. At the end of each such notice there shall be a statement of the date of the first publication of the summons and notice. A copy of the summons and notice shall be posted in a conspicuous place in each banking institution and in each financial institution holding funds or property described in the complaint, within 15 days after the first publication of the summons, and copies thereof mailed within the same period to all defendants whose last known place of residence or business is shown by the petition for writ of attachment to be in the State of Minnesota, at such last known place of residence or business.

Subdivision 4. Any person interested may intervene in such action, as provided by law.

Subdivision 5. Upon the completion of the publication of the summons and notice, and the elapse of sixty days from the date of the first publication thereof, and proof thereof, together with proof of the posting and mailing provided for in Subdivision 3 of this section, the court shall have full and complete jurisdiction over all the funds and other property which have been attached and of everyone having or claiming an interest in said funds or other property, and full and complete jurisdiction to hear and determine the issues in the action and render an appropriate judgment therein.

Subdivision 6. Upon the trial the verified statements filed with the secretary of state, pursuant to the provisions of Subdivisions 1 and 2 of Section 4 of this Act, shall be prima facie evidence of the facts therein stated. The court shall, if it finds that any party is entitled to any of the funds or other property described in the complaint, order that the action be dismissed as to such party, and the attachment of such funds vacated, without costs. If the court shall find as to all or any part of the funds and other property described in the complaint that the depositors or owners thereof have abandoned the same, it shall adjudge that such funds and other property have escheated to and become the property of the state, and that the state is entitled to recover the same.

Subdivision 7. Upon the entry of any judgment in favor of the state, the attorney general shall notify, in writing by mail, all banking institutions and all financial institutions holding any funds or other property adjudged to have

escheated to and become the property of the state, and demand that the same be forthwith transmitted to the state treasurer. If any such institution shall fail, within 30 days after the mailing of such written notice, to transmit such funds or other property to the state treasurer, the attorney general, after filing a proof of the mailing of the notice with an affidavit showing such failure to transmit the funds or other property, may proceed to have the judgment enforced by execution. Such a judgment as to any funds or other property shall be satisfied only out of the property attached. Executions may be directed to the sheriff of any county and shall run throughout the state without the necessity of filing any transcripts of the judgment in counties other than that in which it was rendered.

Sec. 6. All monies transmitted to the treasurer by banking institutions and financial institutions, and all monies collected on execution, shall be credited to the general revenue fund.

Sec. 7. Any person claiming to be legally entitled to any of the funds or other property involved in any action commenced under the provisions of Section 5 of this Act, who did not appear in said action, may, within a period of ten years after the entry of judgment therein, sue the state to recover the funds or other property of which it was alleged he was the owner or depositor, and in case such person be an infant or under disability, the period of limitation is extended to one year from the removal of such disability. In case such person recovers judgment the attorney general shall advise the legislature at its next session of such recovery and request an appropriation for the payment of such judgment. If funds or other property in-

involved amount to less than the value of \$200, any person making claim to such funds or other property may make application to the executive council for the refund thereof, and upon good cause shown, the executive council is authorized to order such refund paid to such claimant from the general revenue fund. A sufficient amount is appropriated annually to pay any such refunds so ordered by said executive council. In any suit brought under the provisions of this section no interest shall be allowed by the plaintiff and no interest shall be allowed by the executive council on any amount which it shall order paid.

Sec. 8. Any banking institution or financial institution which shall, or the cashier or managing officer of which shall, knowingly and wilfully violate any of the provisions of this Act shall forfeit to the State interest in the amount of 15 per cent per annum upon all such funds or other property held on deposit or otherwise by said institution as come within the provisions of this Act; provided, however, that, until it shall have been determined by final decision of a court of competent jurisdiction, from which no appeal or request for review has been made within the time permitted by applicable provisions of law or from which no appeal or request for review is permissible, that the provisions of this Act are valid and enforceable, no bank or financial institution shall become subject to the penalty herein provided for failure to comply with any provision of this Act if such failure be based upon its contention in good faith that the provisions of this Act are invalid as applied to it.

Sec. 9. Laws 1937,¹ Chapter 358, being Mason's Supplement 1940, Sections 7658-21 to 7658-27, is hereby repealed.

Approved April 24, 1943.

APPENDIX "B"**Wisconsin Bank Deposit Escheats Statute.**

220.25 ESCHEAT OF BANK DEPOSITS. (1) When any person shall die intestate, without heirs, leaving on deposit or otherwise any fund, funds or property of any kind with any banking institution, or shall abandon such fund, funds or property, the same shall escheat to and become the property of the state, to be disposed of in the same manner as other escheated property. The term "banking institution" shall include every banker, bank, branch bank or trust company within the state.

(2) Any person who shall have on deposit or otherwise with any banking institution any fund, funds or property of any kind, and shall not deal therewith for a period of twenty years by adding to or withdrawing therefrom, and shall not have asserted any claim to such fund, funds or property for such period, shall be presumed, unless shown to the contrary, to have died intestate, without heirs, or to have abandoned such fund, funds or property.

(3) (a) It shall be the duty of every banking institution which holds on deposit or otherwise any fund, funds or property of any kind, known by such banking institution to have escheated to the state, to inform the attorney general of such fact within thirty days after it becomes known to such banking institution.

(b) The cashier or managing officer of every banking institution shall, within thirty days after the first of January, annually return to the secretary of state a sworn statement in duplicate showing the names of persons who have left on deposit or otherwise any fund, funds or prop-

erty of the value of ten dollars, or more, and have not dealt with respect thereto for a period of twenty years by adding to or withdrawing therefrom, or asserting any claim to such fund, funds or property for such period, unless known to such officer to be living. Such statement shall show the amount of such deposit, including interest, or the value and nature of such property; and the depositor's or owner's last known place of residence or business. Such subscribing officer shall certify that said report is a complete and correct statement of all such unclaimed funds and property to the best of his knowledge, after diligent inquiry. The duplicate copy of such report shall be delivered by the secretary of state to the attorney general immediately upon its receipt.

(c) . The cashier or managing officer of every banking institution shall, within thirty days after the first day of January, every five years commencing January 1, 1936, return to the secretary of state, a sworn statement showing the names of persons who have left on deposit or otherwise any fund, funds or property of the value of ten dollars, or more, and have not dealt with respect thereto for a period of ten years by adding to or withdrawing therefrom, or asserting any claim to such fund, funds or property for such period. Such statement shall show the amount of such deposit, including interest, or the value and nature of such property and the depositor's or owner's last known place of residence or business; such subscribing officer shall certify that said report is a complete and correct statement of all such unclaimed funds and property to the best of his knowledge, after diligent inquiry.

(d) . The secretary of state shall have the aforemen-

tioned reports permanently bound with an alphabetical index of the depositors, or owners, with an appropriate reference to the bound reports, and such bound reports and index shall be open to public inspection.

(e) A copy of the reports required by paragraphs (c) and (d), together with a notice directed to whom it may concern, stating that such deposits or property have been unclaimed for a period of ten or twenty years, as the case may be, and requesting all persons having knowledge or information relative to the whereabouts of such depositors or other possible claimants to give such information to the subscribing officer, shall be displayed in a prominent place in such bank for a period of thirty days from the date of the filing of such report, and in cases provided by paragraph (c), a copy of such report and notice shall be published once each week for four consecutive weeks in a newspaper of general circulation in the county where such bank is located, and the expense of publication shall be deducted proportionately from such deposits.

(4) If, upon investigation, the attorney general shall conclude or have reason to believe that any fund, funds or other property have escheated to the state, he shall institute proper proceedings under the provisions of this section to have such funds or property adjudged the property of the state and transmitted to the state treasurer. Such suit shall be commenced by the attorney general in the name of the state in the circuit court of Dane county, and the bank or banks in which the funds or property are deposited, and the names of the depositors or owners, as reported, shall be joined as parties.

(5) (a) Service of process in such action or actions

shall be made by the delivery of a copy of the summons and complaint to an officer of each of the defendant banks and by publication of a copy of such summons once each week for four consecutive weeks in a newspaper of general circulation published in the county in which the depository is located. With the summons, a notice shall also be published, giving the title of such action and referring to the complaint therein, and directed to all persons other than those named as defendants therein, claiming any interest in any deposit or property mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such summons and show cause, if any they have, why it shall not be adjudged that the owners of such deposits or property have died intestate without heirs, or have abandoned such deposits or property, and why such funds or property have not escheated and should not be deposited with the state treasurer as herein provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. At the end of such notice there shall be a statement of the date of the first publication of said summons and notice.

(b) Any person interested may appear in such action and become a party thereto. Upon the service of the summons and complaint upon the defendant bank or banks, and upon the completion of the publication of the summons and notice and the elapse of sixty days from the date of the first publication of said summons and notice, the court shall have full and complete jurisdiction over such deposits and property and of the person of every one having or claiming any interest in said deposits or property,

and shall have full and complete jurisdiction to hear and determine the issues therein and render the appropriate judgment thereon.

(c) If, upon the trial of such action, it shall adjudge that the lawful owner of such funds or property has died intestate without heirs, or has abandoned such funds or property, it shall be adjudged that such funds or property has escheated to the state, and the banking institution in which such funds or property are on deposit shall forthwith deliver same to the state treasurer to be received by such treasurer and be dealt with in the same manner as other escheated property.

(d) Any person not appearing in such action can sue the state to recover such funds or property, with interest thereon at such rate as would have been received had said property been permitted to remain in the original depository, for a period of five years after the entry of such judgment, and in case such person be an infant or under disability, the period of limitation is extended to one year after the removal of such disability.

(e) Any banking institution which shall violate any of the provisions of this section shall forfeit to the state the sum of one hundred dollars for every day that such violation continues.